

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

ARLENE ARKUS,

Plaintiff

VS.

**RICHARD J. BOUDREAU &
ASSOCIATES, LLC,**

Defendant

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**Case No. 4:10cv394
(Judge Schell/Judge Bush)**

JOINT DISCOVERY/CASE MANAGEMENT PLAN

Pursuant to Federal Rule of Civil Procedure (FRCP) 16 and 26(f), and this Court's Order to Conduct Rule 26(f) Conference, Plaintiff, ARLENE ARKUS ("Plaintiff"), and Defendant, RICHARD J. BOUDREAU & ASSOCIATES, INC. ("Defendant"), through their respective counsel, respectfully submit the following Joint Discovery/Case Management Plan.

1. A factual and legal description of the case which also sets forth the elements of each cause of action and each defense.

Plaintiff: Count I of Plaintiff's Complaint is based on the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692 *et seq.* Plaintiff alleges Defendant attempted to collect a debt from Plaintiff on behalf of the original creditor, Capital One, with an account number ending in 9044. Plaintiff's alleged debt owed to Capital One arose from transactions for personal, family, and household purposes. On March 12, 2010, Defendant mailed Plaintiff a letter that threatened legal action against Plaintiff. When Plaintiff received the March 12, 2010 letter from Defendant, which is printed on Defendant law firm's letterhead, and signed with the law firm's name, Plaintiff believed that legal action has or soon will be brought against Plaintiff. Defendant did not intend to take legal action against Plaintiff at the time Defendant mailed the March 12, 2010 letter to Plaintiff, as Defendant's letter states that "no attorney with this firm has personally reviewed the particular circumstances of [Plaintiff's] account." As of the filing of this Complaint, Defendant has not taken any legal action against Plaintiff.

Accordingly, Plaintiff alleges Defendant violated the following sections in the FDCPA:

- a. Defendant violated § 1692d of the FDCPA by engaging in conduct that the natural consequences of which was to harass, oppress, and abuse Plaintiff in connection with the collection of an alleged debt.
- b. Defendant violated § 1692e of the FDCPA by using false, deceptive, and

- misleading representations in connection with the collection of any debt.
- c. Defendant violated § 1692e(3) of the FDCPA by falsely representing or implying that any individual is an attorney or that any communication is from an attorney.
 - d. Defendant violated § 1692e(5) of the FDCPA by threatening to take legal action against Plaintiff even though Defendant has not and does not intend to take such action.
 - e. Defendant violated § 1692e(10) of the FDCPA using false and deceptive means in an attempt to collect a debt.

Defendant: Defendant denies any violation of § 1692d, 1692e, 1692e(3), 1692e(5) or 1692e(10). The language in the letter mailed by Defendant to Plaintiff is not an actionable misrepresentation and is not an actionable FDCPA claim.

2. The date the Rule 26(f) conference was held, the names of those persons who were in attendance and the parties they represented.

The conference was held on October 18, 2010 between the following:

Michael S. Agruss
Attorney for Plaintiff,
ARLENE ARKUS

Monica Schulz Orlando
Attorney for Defendant,
RICHARD J. BOUDREAU & ASSOCIATES, LLC

3. A list of any cases that are related to this case and that are pending in any state or federal court with the case numbers and court along with an explanation of the status of those cases.

None.

4. An agreed discovery/case management plan, if agreement can be reached, which will be used by the court to prepare a Scheduling Order.

Please see [Proposed] Scheduling Order, attached hereto as Exhibit A.

5. A suggested date for the Final Pretrial Conference (see enclosed list of the court's available Final Pretrial Conference dates) at which time the trial will be scheduled.

October 3, 2011.

6. The expected length of trial.

One (1) to Two (2) days.

7. Whether the parties jointly agree to trial before a magistrate judge (the parties should seriously consider this option given that the undersigned judge is now setting jury trials approximately 9 months out from the date of the final pretrial)

Plaintiff does not agree to trial before a magistrate judge. Defendant does not object to a trial by the magistrate judge.

8. Whether a jury demand has been made.

Plaintiff has made a timely jury demand in this matter.

9. Whether any party requests a scheduling conference with the court.

The parties do not request a scheduling conference with the court.

Dated: October 25, 2010

RESPECTFULLY SUBMITTED,

By: /s/ Michael S. Agruss

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ARLENE ARKUS

Dated: October 25, 2010

RESPECTFULLY SUBMITTED,

By: /s/ Monica Schulz Orlando

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